CORPORATIONS—SUIT BY STOCKHOLDERS—REFUSAL OF DIRECTORS TO SUE.—Bill in equity by a stockholder in the United Electric Co. against the United Gas Improvement Co. to compel it to account to its co-defendant, the United Electric Co., for alleged secret profits made in the promotion of the latter. Complainant first requested the directors to sue, but they refused on the ground that a suit was inadvisable. The United Electric Co. answers the bill by plea that as it deems the suit inexpedient, it should be permitted to prohibit its prosecution by a stockholder. *Held,* that the refusal of the directors to sue constitutes a breach of trust, which is intensified by the answer that the company deems suit inexpedient. *Groel* v. *United Electric Co. of New Jersey et al.* (1905), — N. J. —, 61 Atl. Rep. 1061.

The management of the corporate affairs is vested in the directors and not in the stockholders, and all suits to protect the rights of the corporation must therefore be brought by the former. The directors have a discretion in determining whether it is expedient to institute actions involving corporate interests, which power cannot be usurped by the shareholders, so long as the directors act in good faith. *Hawes* v. *Oakland,* 104 U. S. 450, 26 L. Ed. 827, 2 WILGUS CORP. CAS. 1716; *Hearst et al.* v. *Putnam Mining Co.,* 28 Utah 184, 77 Pac. 753. But this authority extends only to cases where they act honestly, and if the refusal of the directors to sue is due to a breach of their official duty, amounting to a breach of trust, rather than to a mere error of judgment, in such case any stockholder may file his bill in equity for relief, after making demand on the company to sue, or on proving facts showing that such request would be unavailing. *Dodge* v. *Woolsey,* 18 How. 331, 15 L. Ed. 401; *Dunphy* v. *Traveller Newspaper Ass'n et al.,* 146 Mass. 495, 16 N. E. 426; *Gamble* v. *Q. C. W. Co. et al.,* 123 N. Y. 91, 99, 25 N. E. 201, 9 L. R. A. 527. It is often difficult to determine between a mere error of judgment and an abuse of discretion; it has, however, been held that it is not necessary that the refusal be charged to be corrupt, or from motives of self interest, but that "when all disinterested and fair men, on the facts upon which the directors' act is challenged, would reach the conclusion that the decision not to sue was improper and greatly prejudicial to corporate interests, and it appears that the directors have been negligent, or have not deliberated or passed judgment on the merits of the question and refused to sue for some extraneous reason, or upon a mistaken view of the law, the court cannot refuse to intervene, although the directors may have been honest and disinterested." *Kessler & Co.* v. *Ensley Co.,* 129 Fed. Rep. 397, 408.

CORPORATIONS—SUIT IN STOCKHOLDERS' NAMES—DEVICE TO CONFER JURISDICTION ON FEDERAL COURTS.—A corporation being a citizen of West Virginia, brought suit in the state court to restrain defendants, who are citizens of the same state and members of the United Mine Workers of America, from interfering with the work of their employers and inducing them to strike. Pending this proceeding and with full knowledge of it, certain non-resident stockholders demanded that the officers of the corporation bring suit in the Federal court. Upon the officers' refusal they themselves file this bill, joining the corporation as defendants, and pray for relief. *Held,* that such acts

did not constitute a compliance with equity rule 94, relating to stockholders' bills and requiring that such suit shall not be collusive to confer Federal jurisdiction; and that the court had no jurisdiction. *Kemmerer et al.* v. *Haggerty* (1905), 139 Fed. Rep. 693.

While a stockholder has a right to sue in cases where the corporation is the proper party, yet this right should be limited to cases where the directors are guilty of a fraud or breach of trust or are proceeding *ultra vires*. *Dodge* v. *Woolsey*, 18 How. 331, 15 L. Ed. 401; *Groel* v. *Electric Co.* (N. Y. Eq.), 61 Atl. Rep. 1061, and see discussion of this case in preceding note. An attempt on the part of those interested to bring their grievances into the Federal court by suing in the name of stockholders, who have the requisite citizenship, is often a mere device to confer jurisdiction, and will not be countenanced by the courts. *Hawes* v. *Oakland*, 104 U. S. 450, 2 WILGUS CORP. CAS. 1716; *Huntington* v. *Palmer*, 104 U. S. 482, 26 L. Ed. 833; *Detroit* v. *Dean*, 106 U. S. 537, 27 L. Ed. 300; *Quincy* v. *Steel*, 120 U. S. 241, 30 L. Ed. 624. In the principal case, the stockholders knew of the pending of an action in the State court and considering that this action was brought for no other purpose than that of conferring jurisdiction the court refused to accept it.

CRIMINAL LAW—CUMULATIVE SENTENCES.—Petitioner in habeas corpus was sentenced on two indictments, charging high misdemeanors, to seven and then to five years of imprisonment, the latter term to begin on the expiration of the former. The former has been served and the petitioner seeks release. *Held*, the petition should be dismissed. *State* v. *Mahaney* (1905), — N. J. —, 62 Atl. Rep. 265.

The opinion gives a very interesting and quite complete history of the common-law power in a court to pass consecutive sentences on two or more indictments for misdemeanors. The power is almost universally recognized. Indiana, Michigan and Texas, however, hold that a court can pass such sentences only by virtue of statute. *Miller* v. *Allen*, 11 Ind. 389; *In re Lamphere*, 61 Mich. 105; *Ex Parte Hunt*, 28 Tex. App. 361. The Kentucky courts restrict the common-law power to cases where the punishment is in the discretion of the court: if the punishment is fixed by the jury, the court can only render judgment in conformity with the verdict. *James* v. *Ward*, 2 Met. (Ky.) 271. This would seem on general principles to be a universal restriction. For unless it is expressly stated by the body passing them that sentences are successive, the courts deem them concurrent. *In re Jackson*, 3 MACARTHUR (D. C.) 24. A verdict then for impliedly concurrent terms of imprisonment could not be made into successive sentences by the court. In Kentucky now, as in some other States, the power to pass cumulative sentences is secured to the courts by statute. Where the crimes charged are felonies, the power to pass consecutive sentences does not exist, for the reason that in such cases at the old common law judgment could be rendered only by a known formula. *Rex* v. *Wilkes*, 19 HOWELL'S STATE TRIALS, 1133; *Queen* v. *Cutbush*, L. R. 2 Q. B. 379; *In re Lamphere*, supra.